Commonalty of the city of New York, one-third of one per cent. of its gross receipts from passenger travel on its road for the year ending on the 30th September preceding, as compensation for the rights and privileges granted and authorized to them under and by virtue of the Act of the Legislature of the State of New York entitled, "An act to authorize the Second Avenue Railroad Company, in the city of New York, to extend their tracks and operate the same," passed April 16th 1872; and for the present fractional year, ending on the 30th of September 1873, the Second Avenue Railroad Company shall pay to the said Mayor, Aldermen and Commonalty on the 1st day of November 1873, the sum of $1000 as such compensation.

ABSTRACTS OF RECENT AMERICAN DECISIONS.

SUPREME JUDICIAL COURT OF NEW HAMPSHIRE.[1]

COURT OF CHANCERY OF NEW JERSEY.[2]

SUPREME COURT OF NEW YORK.[3]

UNITED STATES CIRCUIT AND DISTRICT COURTS.[4]

SUPREME COURT OF WISCONSIN.[5]

ADMINISTRATOR.

For what and to whom accountable.—Where an executor who has so far administered the personal estate of his testator as to convert it into money dies, and administration *de bonis non* is granted, the administrator is not entitled to demand of the executor of such deceased executor the part of the estate converted into money; for that the representative of the deceased executor must account to the legatee or next of kin. He is only entitled to such chattels or choses in action as have not been so converted, and exist as they were at the death of the first testator: *Carrick's Administrator* v. *Carrick's Executor*, 8 C. E. Green.

ADVANCEMENT.

Advances in Money cannot be charged against a Son's Share of Land.—An advancement in money made by a father in his lifetime to one of his sons, cannot have any effect upon the share of the real estate of the father, which at his death descends to his son. Only advancements or settlements in land can have such effect: *Havens* v. *Thompson & Allen*, 8 C. E. Green.

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[1] From J. M. Shirley, Esq.. Reporter; to appear in 52 N. H. Rep.

[2] From C. E. Green, Esq., Reporter; to appear in vol. 8 of his Reports.

[3] From Hon. O. L. Barbour; to appear in vol. 64 of his Reports.

[4] From J. H. Bissell, Esq., Reporter; to appear in vol. 1 of his Reports.

[5] From Hon. O. M. Conover, Reporter; to appear in 31 Wis. Rep.

Whether an agreement by parol or in writing without seal, by a son with his father, on receiving an advancement in money, that it shall be in full of the son's share of the father's real estate at his death, can have any effect? *Quære: Id.*

ASSUMPSIT.

Deed—Promise to pay the Consideration not implied under some Circumstances.—Where the children and devisees of a testator executed a written agreement to divide all his property equally, although his will gave to his three sons a valuable lot, and divided the residue of his estate equally between his sons and daughters, and one of the two sons at the signing of such agreement executed to the other sons a deed for his share in that lot with the verbal understanding that it was for the purpose of enabling them to carry out the agreement of equalization, no implied promise arises that these grantees will pay to him the amount specified in the deed as the consideration of the conveyance. The circumstances negative such implication: *Belden* v. *Belden*, 8 C. E. Green.

BANKRUPTCY. See *Constitutional Law.*

Non-payment of Commercial Paper—Partnership—Transfer of Firm Property from one Partner to another—Secret Partners.—A man should not be adjudged bankrupt for non-payment of commercial paper if he has reasonable ground to believe that he is not liable upon it: *In re Munn*, *D. C. N. Dist. Ills.*, 1 Bissell.

If he can satisfy the court that he has good reason for disputing his liability, especially where he is in fact solvent and has paid all other just claims, this court should not entertain jurisdiction, but should turn the parties over to pursue the ordinary remedies: *Id.*

A transfer of firm property from one member of the firm to another is not an act of bankruptcy, within section 39 of the act: *Id.*

Such a transfer is not a fraud upon the creditors of the firm, nor does it hinder or delay them or constitute a preference contrary to the provisions of the act: *Id.*

In order to charge a secret partner for the debts of the firm, it is necessary to show that such debts were contracted in the name and business of the firm, or that he had an interest in the contract or profits: *Id.*

Where the purchaser of a note did not know that there were any secret partners with the persons whose names appeared upon its face, and for whose individual benefit it was given, and placed the proceeds to the credit of the holder, the secret partners would not be liable: *Id.*

The fact that such purchaser afterwards proved his claim in bankruptcy against the signers of the note, goes to show that he understood them alone to be liable and discounted it upon their responsibility: *Id.*

Where firms composed of different members were doing business under the same firm-name, circumstances stated under which dormant partners may not be liable: *Id.*

BROKER. See *Stock.*

CONSTITUTIONAL LAW. See *Statute.*

State and Federal Courts—Bankruptcy.—The United States courts have not jurisdiction to restrain a sheriff from selling under an execution issued from a state court: *Ruggles* v. *Simonton, Sheriff, &c., C. Ct. W. Dist. Wis.*, 1 Bissell.

The state court having first obtained jurisdiction of the property, their control is exclusive of this court; other claimants must try their rights in that tribunal: *Id.*

This rule does not apply to proceedings against bankrupts which rest upon different grounds: *Id.*

CORPORATION. See *Office.*

Regularity of Proceedings to incorporate—Increase of Capital—Corporation de facto—Liability of Stockholders—Power of Courts to order Assessments to pay Debts of the Corporation—Release of unpaid Balance by Directors.—In an action by the assignee of a corporation organized under the Illinois Statutes, against a stockholder to recover the amount unpaid on his stock, it is not a sufficient defence that the corporate proceedings have not been strictly in accordance with the statute: *Upton* v. *Hansbrough*, *D. C. N. Dist. Ills.*, 1 Bissell.

Where an insurance company has attempted to increase its capital and filed papers for that purpose, received subscriptions for and sold stock under such increase, and incurred liabilities upon policies of insurance bearing upon their face evidence of such increase, this is sufficient to constitute the company a corporation *de facto*, so that neither it nor its stockholders can object that it is not a corporation *de jure*: *Id.*

Where to the public a company had all the external *indicia* of being a corporation and legally entitled to exercise the rights and franchises it assumed, a person voluntarily taking stock in such company is not in a position, when sued for the balance due for such stock for the benefit of creditors of the company, to deny the authority of the company to issue such stock, or his liability thereunder: *Id.*

A provision in the charter requiring the corporation to take securities for their stock to a certain amount, does not prohibit it from afterwards selling stock upon other terms, or without security: *Id.*

A provision in the subscription and the stock certificate that the balance was to be paid on the call of the directors *when ordered by a vote of a majority of the stockholders themselves*, does not prevent this power being effectually exercised by this court: *Id.*

Though no assessment or call pursuant to the terms of the subscription was made before proceedings in bankruptcy, this court became vested with all the power and control previously vested in either the chartered officers of the company or stockholders, or both collectively: *Id.*

The facts that the agents and officers of the company represented to the stockholders at the time of their purchase that no assessment would ever be made, and that the stock was in fact non-assessable, or made other false and fraudulent statements in regard to the condition of the company, are inadmissible as evidence, and constitute no defence as against the creditors of the company: *Id.*

This court having the power to require the stockholders to pay the balance due on their stock, it is discretionary whether it shall exercise it without notice to the stockholders. At all events, in a suit by the assignee against a stockholder, such order cannot be reviewed: *Id.*

The fact that the call was for more than was necessary to pay the debts of the company cannot be tried in an action against an individual stockholder: *Id.*

A resolution passed by the directors of the corporation releasing the stockholders from the payment of balances unpaid upon the stock, in accordance with which the certificates of stock were stamped non-assessable, is not binding upon parties who had insured without knowledge of its existence: *Id.*

The purchaser of a certificate of stock who surrenders it and has one issued to himself, and his own name entered upon the stock books, becomes subrogated to the rights and assumes the liabilities of an original subscriber: *Id.*

DAMAGES.

For taking Land for use of a Railroad Corporation.—Under the charter of the defendant company, and by the general principles applicable to such cases, the damages for the taking of land for railroad purposes should be estimated as of the day when the company acquired the right to the property; in this case the day when the commissioners made and filed their award of damages: *Driver* v. *Western Union R. R. Co.*, 31 Wis.

The fact that before the day thus fixed plaintiff had been notified by the company that it would want their lot 7 (the one afterwards taken), and that he had proceeded with the erection of a large manufactory on adjoining lots (which he had purchased, with lot 7, for that purpose), will not prevent him from recovering the diminution in value of such adjoining property as of the day aforesaid, though a large part of such diminution arose from the fact that lot 7 was needed for the convenience of said manufactory: *Id.*

Nor will the fact that the company had commenced proceedings to condemn the land before plaintiff's manufactory was built, affect the application of the rule; it being within defendant's power to abandon such proceedings at any time before the award was made: *Id.*

Nor will the fact that the company had occupied a part of lot 7 with its track under a *license* from plaintiff's grantor, affect the rule of damages: *Id.*

The fact that the company *might* at some future time take steps to condemn said lot 7, could not deprive plaintiff of his right to improve the adjoining lots *in good faith*, and recover full damages for any decrease in their value as thus improved, which might be caused by such subsequent condemnation: *Id.*

Evidence of the business to which plaintiff's adjoining property was devoted, and of the effect upon such business of the taking of lot 7 by defendant, was properly admitted as bearing upon the question of damages; the court having duly instructed the jury that the proper measure of such damages was the value of the land condemned and the *diminution in market value* of the other property: *Id.*

Plaintiff is entitled to recover the diminished value of the *whole* of such adjoining property (used in connection with his manufactory), and not merely that of the single lot next adjoining the land taken: *Id.*

For Conversion of Stock Pledged.—In an action for the conversion of stock pledged, the just and established rule of damages is the highest price of the stock between the date of the demand or conversion and the day of trial: *Lawrence* v. *Maxwell*, 64 Barb.

DEBTOR AND CREDITOR. See *Frauds; National Bank.*

Mortgage by equitable Owner who has conveyed legal Title—Priority of claim by joint Creditors of Mortgagor and Holder of Legal Title.—A mortgage of land to A., the mortgagor's father, who was in equity the real owner of the land, to secure payment to him of a certain annual sum for his support, held posterior in equity to a mortgage of later date given to D. M. & Co., to secure payment of joint notes of the mortgagor and A. for debts due said D. M. & Co., when the prior mortgage was given: *Kaehler* v. *Dibble et al.*, 31 Wis.

The facts that A. was only an accommodation maker of said notes, that they were barred by the Statute of Limitations, and that D. M. & Co., knew of the mortgage to A., when they took theirs, do not change the equities of the parties—A. never having been released from liability by any act of the payees in extending the time of payment without his consent, or otherwise: *Id.*

The mortgage to D. M. & Co., is also prior in equity to one of earlier date given at the request of A. as an advancement to his other children securing the payment of a certain sum to them by the mortgagor. Said last-named mortgage must be treated as a voluntary conveyance, fraudulent and void as to D. M. & Co., as creditors of A.: *Id.*

EQUITY. See *Office; Title; Trust.*

Remedy at Law—Agreement—Extent of Relief to Defendant.—No relief will be given in equity to aid a deed alleged to convey a good legal title and prior in date and registry to the deed against which protection is asked for. Such deed is a good defence at law: *Black* v. *Keiby*, 8 C. E. Green.

No relief can be given in favor of a conveyance not proved to exist and not admitted in the answer: *Id.*

The defendant offered the complainant that if he would purchase the title of a stranger to a lot lying within his premises, he would pay $100 toward it. The complainant purchased it for $375. *Held*, that the defendant was bound to pay $100 with the interest from the purchase, but could not be compelled to pay more: *Id.*

The defendant was bound to pay the price agreed for this title, even if proved not to be a good title: *Id.*

A defendant cannot have any positive relief on his part, touching the subject-matter of the suit. The only relief for him is to refuse the relief prayed for by the complainant: *Id.*

ESTOPPEL. See *National Bank.*

EVIDENCE. See *Corporation; Stock.*

Comparison of Hands—Agent—How far declarations are evidence against Principal.—On a question as to the genuineness of a signature, this court adopts the rule that a comparison of hands by a juxtaposition of two writings is wholly inadmissible, either as primary and sufficient or as corroborating evidence, except when the writing to be proved is of such antiquity that it cannot be proved in the ordinary way, or where the other writings to be compared with it are already in the case and before the jury for some other purpose: *Hazleton* v. *Union Bank*, 31 Wis.

The admissions of an agent as to a transaction in which he acted for his principal are admissible against the principal only when, being within the scope of his authority, they accompanied the transaction, so as to be a part of the *res gestæ: Id.*

Statements of the president of a defendant bank, made *after payment* of the certificate of deposit, the endorsement on which was questioned in this action, and relating to such payment, were not admissible in evidence against the bank: *Id*

EXECUTOR. See *Administrator.*

FRAUDS, STATUTE OF. See *Debtor and Creditor.*

Conveyance in fraud of Creditors—Consideration from Grantee.—A purchaser of lands from a grantee whose deed is void against the creditors of his grantor by the Statute of Frauds will not be protected by the provisions of the sixth section in favor of *bonâ fide* purchaser for valuable consideration, unless he has parted with something of value in the purchase. A conveyance or mortgage for a pre-existing debt, without parting with some security, is not for a valuable consideration within the provisions of that section: *Mingus* v. *Condit*, 8 C. E. Green.

HUSBAND AND WIFE.

Deed in Trust for Wife on Separation.—A conveyance made by a husband to a trustee for the use of his wife on the execution of articles of separation between them, will not be set aside on account of the subsequent adultery of the wife while living separate from him: *Dixen* v. *Dixen*, 8 C. E. Green.

Desertion—Duties of Husband and Wife.—If a husband who has ample means takes his wife, with whom he has for years been living in a city in discord and bitter contest, to a retired country tavern, against her wishes and protest, and in her absence leaves the place with all his baggage, without notice to or knowledge by her of the place to which he has gone, and without any notice by him to her whether he has made provision there or elsewhere for her support, and leaves her thus without money and without any one in the house or its vicinity for companions except the tavern-keeper and his wife, it is such abandonment and separation as, if without justifiable cause, will entitle her to a decree for support and maintenance: *Boyce* v. *Boyce*, 8 C. E. Green.

A wife is bound to accompany her husband to such place as he may, as head of the family, in good faith determine to remove to for habitation or business, provided it does not unreasonably banish her from all society and comforts of civilized life. But a husband has no right, as a punishment for contumacy or bad temper, to banish his wife to a lonely place without friends or society or her accustomed comforts, when he does not stay with her and share her privations: *Id.*

By law a man is not justified in deserting his wife, because she is extravagant or lazy, or swears, or uses worse language, or is sickly, fretful or of violent temper, or because she wreaks her temper or showers her coarse or profane language upon him, and thus makes his life uncomfortable. These are not crimes but infirmities and defects which, in consideration of law, a husband undertakes to put up with when he takes his wife for better or worse: *Id.*

INSURANCE. See *Corporation.*

Application—Warranty.—In respect to life policies, the rule in regard to the statements of the assured, in the application, is different from that which prevails in construing applications for marine and fire policies. In applications of the former class, it *seems* the statements of the assured, concerning his health or vital organs, are not understood or intended as warranties, because the applicant may not know enough of the human system to be aware of the existence of some affection of a vital organ, and because the insurers are supposed to rely upon the opinions of their own medical advisers: *Horn et al. Ex'rs.* v. *The Amicable Mutual Life Ins. Co.*, 64 Barb.

The inquiry is one of honest and fair dealing, on the part of the applicant, and the statements respecting his health are not warranties: *Id.*

Duty of Applicant.—The applicant must state all that he knows bearing upon the condition of his health, and any untrue statement or concealment in this respect ought, justly, to render the policy void: *Id.*

Misrepresentation.—Where it appears that the applicant had any knowledge of the facts called for by the interrogatories annexed to the application, it matters little whether the answer be held a warranty or not, inasmuch as any untrue statement will be a misrepresentation or fraud, which will equally avoid the policy: *Id.*

INTERNAL REVENUE.

Brewer—Neglect to keep proper Books—Money Penalty and Imprisonment—Government may have Civil Action for Penalty without indicting for the Misdemeanor.—To an information against a brewer under the 48th, 49th, 51st and 53d sections of the Act of July 13th 1866, it is not sufficient answer that the neglect to keep the prescribed books and accounts was through ignorance or carelessness, and that there was no wrongful or criminal intent: *United States* v. *Foster, C. Ct. E. D. W.*, 1 Bissell.

The object of the law is to protect the government in the collection of the tax. The penalty is for the omission, and the very nature of this business demanded that he should know his duty in the premises: *Id.*

Nor is it a sufficient answer or excuse that he misconstrued the law, and drew erroneous inferences as to his rights: *Id.*

Where the law prescribes as punishment for an offence both a money penalty and imprisonment, it is not true that the penalty can only be enforced by indictment. The government can maintain an action of debt for the money penalty: *Id.*

The words "shall be liable to, &c.," are permissive and not compulsory; they mark the extreme limit of the penalty, and leave it discretionary whether the whole penalty shall be imposed: *Id.*

LACHES. See *Trust; Will.*

LIMITATIONS, STATUTE OF. See *Debtor and Creditor.; Partnership.*

Bill to revive Suit in Equity—A bill to revive a suit in equity founded on a judgment obtained more than twenty years before the bill was exhibited: in such case the judgment will be presumed to have been paid, and the writ of error dismissed: *Bird's Administrator* v. *Jasler's Executors*, 8 C. E. Green.

When the facts stated in the bill show that the claim upon which it is founded is barred by the Statute of Limitations, or by the equitable presumption of payment in analogy to such staute, advantage of the statute may be taken by demurrer: *Id.*

MANDAMUS. See *Statute.*

MORTGAGE. See *Debtor and Creditor.*

Construction—Future Advances.—In a contest between mortgagees, the clause creating the lien must prevail. A mortgage of one undivided *fourth* part of certain lands is not to be construed or enlarged by the description, as being one undivided *half* part: *Ripley* v. *Harris*, *C. Ct. E. Dist. Wis.*, 1 Bissell.

The mortgage first recorded has the prior lien: *Id.*

A mortgage to secure future advances is valid, but it will not secure advances made by the mortgagee after he has actual notice of a subsequent mortgage, in the absence of a contract to make such advances: *Id.*

A mortgage to a president of a bank to secure loans made by the bank, at the instance of the president, the bank is the creditor of the mortgagee, and also of the president while he holds the securities, and the bank may either hold the president for the debts or compel him to surrender the securities: *Id.*

NATIONAL BANKS.

Estoppel—Ownership of Stock by Directors—By-Law prohibiting Transfer of Stock while indebted to Bank.—If a shareholder in a national bank places part of his shares in the hands of a third person to hold for him under a secret declaration of trust, allows him to be elected a director and himself votes for him and allows him for years, although he owns no other shares, to take the oath required by the National Banking Law, that he is the *bonâ fide* owner of such stock, and declares that one of his objects in doing so is to give him credit and aid him in business; this is such fraud as will estop him from denying that such actual holder was the owner of the shares as against a creditor who trusted him on the faith of being such owner: *Young* v. *Vough and others*, 8 C. E. Green.

A by-law of a national bank declaring that no shares shall be transferred while the holder is indebted to the bank, is authorized by the Act of Congress, and is a reasonable by-law. And any attempted transfer by the shareholder while indebted to the bank is void. And an endorser who pays the note by which such debt is created, is subrogated to the rights of the bank as against such shares of its capital stock: *Id.*

OFFICE.

Jurisdiction of Equity to Inquire into Title to.—A court of equity has no jurisdiction to remove an officer from an office of which he is in possession or to declare such office forfeited. But when in a suit of which equity has jurisdiction, the question of the right to an office, or as to the regularity of an election arises, and must be decided to obtain that relief, that court is competent to inquire into and decide these matters for the purpose of the suit. But its decision will not, like that of a court of law upon a *quo warranto* or *mandamus*, operate *in rem* and remove or oust any one from an office which in fact he holds: *Johnston and others* v. *Jones and others*, 8 C. E. Green.

That the defendant obtained the office claimed by him in a corporation, by an election procured to be held by him by fraud, by breach of trust and a positive agreement, by concealment and treachery, confers on a court of equity jurisdiction to inquire into the validity of such election for the purpose of restraining the acts of the defendant and other persons claiming office by such election. This could be done even if the election held in such breach of trust had been conducted in the manner required by law, and would not be set aside by the courts of law: *Id.*

Where the object of a bill filed in the name of a corporation is to restrain acts of the defendants which they could only legally do as directors, they must show either a legal election that would put them in posssession of the offices, or that they are *de facto* directors of the corporation, and these facts must be determined by the court in order to decide whether the answer is sufficient to dissolve the injunction: *Id.*

When a charter directs that all elections of directors after the first shall be held annually, at such time as the by-laws shall direct, no second election can be held until by-laws designating the time have been adopted. Nor can there be an omission to hold an election such as to authorize the directors to designate a day for it provided for only in case of such omission: *Id.*

Acts required to be done by the directors of a company as the designating a time for election, must be done by them as a board when lawfully convened: *Id.*

A determination by the board or a majority of directors that an election must be held, without fixing a time, does not authorize one of them to fix the time and give notice for such time: *Id.*

A notice of an election required to be given by the directors is not a sufficient notice if signed by the individual names of a majority, without stating that it was given by order of the board, or stating that the persons whose names were signed were directors: *Id.*

An election is not legal, if the list of stockholders exhibited and voted upon on the day of election is not a true list of the stockholders, and known not to be such by the parties who exhibited it and who vote upon it: *Id.*

Stockholders who are not such at the day an election is held cannot vote, although they were stockholders at the day on which it should have been held: *Id.*

A majority of a board of directors who have been legally elected and are in possession of their offices, and in whose place no directors have been legally elected, have the right to use the name of the corporation in a suit: *Id.*

PARTNERSHIP. See *Bankruptcy.*

Joint Enterprise—Termination of it—Disposition of Joint Property—Statute of Limitations—Admissions of one Partner.—An agreement by R. to join with W. in the business of planting and selling oysters, by which R. was to find the capital, and W. to go to Virginia, and plant and buy oysters to be sent to R. in his vessels to New York for sale, each to have one-half of the net profits, is a partnership: *Ruckman* v. *Decker*, 8 C. E Green.

On the termination of such partnership planted oysters remaining in the beds after payment of all partnership debts, are the common property

of both partners, of which as in case of any personal property held in common one tenant in common cannot dispose of the share of the other without his authority: *Id.*

If such tenant in common turn over such property to a firm of which he becomes a member, such firm is accountable to the other tenant in common of the property for the value of his share of the property so turned over and used by the new firm: *Id.*

The purchase of the property of one man from another who is in possession of it without authority from the true owner to sell it, will not change the title nor protect such purchaser against the true owner. The doctrine of equity which protects a *bonâ fide* purchaser without notice, only applies to a purchaser of the legal title without notice of the equitable title of a third person. And in such case notice to one partner would be held as notice to the firm: *Id.*

In equity the defence of the Statute of Limitations may be set up by plea, answer or demurrer; but if not set up in any way in the pleading, it cannot avail: *Id.*

The admissions of one partner are evidence against the others in a bill brought against all for partnership liabilities: *Id.*

PERSONAL PROPERTY. See *Partnership.*

Title and possession or right of possession of personal property is all that is required to enable the holder to claim the property or its value: *Orr* v. *The Mayor, &c., of New York*, 64 Barb.

The plaintiff and his firm had purchased a floating elevator, with its boiler, engine, and machinery, and advanced the whole purchase-money under an agreement to convey it to B. on his paying the money advanced. In an action under the statute of April 13th 1855, against the city of New York, to recover for the destruction of the property by a mob; *Held*, that the plaintiff having the title and the right to the possession of the property, this gave him a sufficient interest to enable him to recover for its value: *Id.*.

RAILROAD. See *Damages.*

SECURITY. See *Mortgage; Stock.*

STATUTE. See *Internal Revenue.*

Public Acts—What are—What rights may be taken away by Statute —Mandamus.—An act regulating the disposal of a part of the public funds of the state, previously regulated by general laws, is a *public* act, of which the courts will take judicial notice, and a "general law" within the meaning of section 21, article 6, of the state constitution, so that it does not take effect until published; although it applies only to moneys. which under the previous general laws were payable only to two particular towns: *State ex rel. Voight* v. *Hoeflinger*, 31 Wis.

An act repealing a public or general law is also a public or general law: *Id.*

Whatever is given by statute may be taken away by statute, except vested rights acquired under it, and except where the granting statute is in the nature of a contract on the part of the legislature: *Id.*

Where, on an appeal from a judgment awarding a peremptory *mandamus*, it appears that the relator is *now* entitled to such writ, the judgment will be affirmed without regard to the question whether it was correct when rendered: *Id.*

Under ch. 537, Laws of 1865, and ch. 151, Laws of 1869, so much

of the "Drainage Fund" as arises from the sale of "swamp and overflowed lands" within any town in each year is to be paid over to the treasurer of the town by the county treasurer, who receives it from the state treasurer. By an act published as ch. 64, P. and L. Laws of 1870, all the drainage fund belonging to the towns of B. and J. in the county of M., and all of said fund that should be appropriated to said towns for the next three years, was directed to be set apart and used for the construction of a certain bridge in said county, and commissioners were appointed to superintend the construction of said bridge, with authority to draw said moneys from the county treasury. A peremptory *mandamus* was awarded by the court below in favor of the treasurer of one of said towns, commanding the county treasurer to pay over *to him* so much of said moneys as belonged to that town (instead of holding it subject to the order of the bridge commissioners). Pending an appeal from this judgment, the Act of 1870 was absolutely repealed by an act published in September 1871, as ch. 70, P. and L. Laws of 1871. *Held*, That both of said Acts of 1870 and 1871 were public and general laws, of which the court takes judicial notice, and which took effect only upon publication: *Id.*

That no vested rights were acquired under the Act of 1870—no contract having been entered into for the construction of the bridge: *Id.*

That the general laws in force before 1870, regulating the drainage fund, now apply to said moneys belonging to the towns of B. and J.; and the town treasurer is *now* entitled to demand and receive from the county treasurer the moneys in dispute: *Id.*

Stock.

Pledging—Rights of Pledgor—Duty of and Liability of Pledgee.—Where stock is pledged to a broker as security against loss in conducting transactions in the purchase and sale of gold coin, and a loss occurs, his duty, as well as the law, requires that he should call upon the pledgor for money to meet his loss, or get his consent to use or borrow upon the stock pledged. If, without such call or consent, he uses the stock, to borrow money for his own purposes, or otherwise disposes of it, he is liable to the pledgor in an action for a conversion: *Lawrence* v. *Maxwell*, 64 Barb.

Evidence—Custom.—In such an action, evidence to prove that it is customary among brokers in New York to use the stock held by them as security in the manner this stock was held by the broker, and that the defendant had previously held stock of the plaintiff as security, which he had used in a similar manner without objection or complaint on the part of the plaintiff, although he knew of it, is immaterial and should be excluded: *Id.*

Brokers who use the stock of their principals, relying upon any such custom, are liable to return it when called upon, if their demands or liabilities incurred on the security of the stock have been satisfied: *Id.*

If they cannot return it they are liable in damages for the injury which has been caused by the loss of the stock: *Id.*

Title.

Bill to remove Cloud upon—Sufficiency of Cause of Action—Possession.—A complaint which avers that plaintiff is the owner, has legal title

to, and is in possession of certain lands, and that defendant *sets up a claim* thereto—and which thereupon demands that defendant be adjudged to release all claims to the land and pay the costs of the action—*held*, not to state a cause of action: *Wals* v. *Grosvenor*, 31 Wis.

A complaint under sect. 29, ch. 141, R. S., to remove a cloud upon plaintiff's title, should state facts showing the nature and the invalidity of defendant's claim, and plaintiff's liability to injury in consequence of its assertion: *Id.*

It is not necessary in such a complaint to set out plaintiff's chain of title; but the averment here made that he is the owner in fee simple and in possession is sufficient: *Id.*

The action authorized by said section 29 cannot be maintained except by one who is in the *actual* and *visible* possession of the premises. *Taylor* v. *Rountree*, 30 Wis., as to this point, overruled: *Id.*

Under the code an averment that plaintiff is in the possession will be construed to allege actual, visible possession: *Id.*

TRUST.

Purchase by Trustee at his own Sale—Laches.—If an administrator or other trustee directly or indirectly purchase lands at a sale made by himself as such, the sale will be set aside on application of the parties really interested: *Smith et al.* v. *Drake*, 8 C. E. Green.

Courts of equity will refuse relief, even in cases of breach of trust on account of the laches or unreasonable delay of those concerned to apply for relief. This doctrine is somewhat in analogy to the Statute of Limitations at law. But the time which constitutes the laches depends on the circumstances. In this case the suit was commenced seventeen years after the oldest son of the intestate, and five years after the youngest son came of age, and it was, under the circumstances, held not to be such laches as will bar the relief: *Id.*

Such relief is always granted on equitable terms. The purchaser in this case was allowed the value added to the property by the improvements erected by him, and the debts of his intestate which he had paid out of the money arising from the sale declared void, with interest from the date of such payment, and was charged with the rent or occupation value of the premises from the purchase, less one-third during the life of the widow of the intestate who had conveyed to him her right of dower: *Id.*

UNITED STATES COURTS. See *Constitutional Law.*

WILL.

Testamentary Capacity—Laches in attacking a Will.—A party interested who, having reasonable grounds for believing that a will was obtained fraudulently, or by undue influence, or when the testator had not testamentary capacity, did not take steps to prevent the probate of the will, nor attempt to have it set aside until after five years, *held* guilty of *gross laches: Holden* v. *Meadows*, 31 Wis.

The complaint in an action to set aside a will, &c., avers that by reason of the softening of his brain, the testator's "memory and mental faculties had become *almost wholly obliterated*," and that he had been in that condition for many months before the will was made, and died a

few weeks after its execution. *Held*, that upon these averments the testator cannot be regarded as having had, at the time, testamentary capacity: *Id.*

Competency of Testator.—Neither age nor weakness of intellect are sufficient to incapacitate a person to make a will. It must be an entire loss of intellect, so that the testator was unable to understand what he was doing, or the contents of the paper, when read to him: *Crolius et al.* v. *Stark et al.*, 64 Barb.

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